

**ENVIRONMENTAL ASSESSMENT**  
**of the**  
**TEMPORARY RULE**  
**implementing the**  
**ATLANTIC LARGE WHALE TAKE REDUCTION PLAN**  
**GEAR RESTRICTIONS**

**February 2006**

**National Marine Fisheries Service (NMFS)**  
**National Oceanic and Atmospheric Administration**  
**DEPARTMENT OF COMMERCE**

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**Draft EA:** February 7, 2006  
**Final EA:** February 9, 2006

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## Executive Summary

This environmental assessment (EA) is being prepared in accordance with the National Environmental Policy Act (NEPA, 42 USC 4321 *et seq.*), regulations issued by the Council on Environmental Quality (CEQ) (40 CFR Parts 1500-1508), and guidance issued by the National Oceanic and Atmospheric Administration in Administrative Order 216-6.

This EA analyzes the effects on the quality of the human and natural environment caused by the implementation of a regulation pursuant to 50 CFR 229.32(g)(1), proposing to temporarily prohibit any vessel from fishing with any gillnet gear in the Atlantic ocean waters between 32°00' N. lat. (near Savannah, GA) and 27°51' N. lat. (near Sebastian Inlet, FL) and extending from the shore eastward out to 80°00' W. long (the Southeast U.S. Restricted Area, 50 CFR 229.32 (f)(1)(i)), from the effective date of the rule through March 31, 2006, consistent with the requirements of the implementing regulations for the Atlantic Large Whale Take Reduction Plan (ALWTRP). NMFS is taking this action based on its determination that a right whale mortality, documented on January 22, 2006, was the result of an entanglement by gillnet gear within the Southeast U.S. Restricted Area during the restricted period, November 15-March 31.

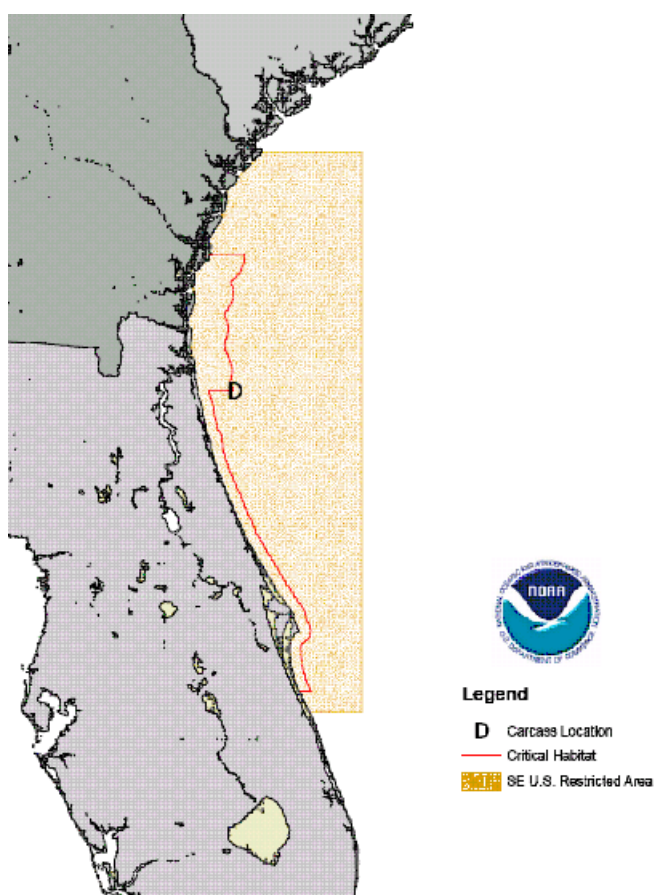


Figure 1: Southeast U.S. Restricted Area, Critical Habitat, and Carcass Location.

NOAA's National Marine Fisheries Service (NMFS) finds that implementation of this temporary rule will not have a significant impact on the quality of the human environment. This action will result in the prohibition of gillnets in the Southeast U.S. Restricted Area as a result of the recent entanglement of a right whale in gillnet gear in the Southeast U.S. Restricted Area.

## **Introduction**

Granted the authority and mandate by the Marine Mammal Protection Act (MMPA), the National Marine Fisheries Service (NMFS) must reduce the incidental mortality and serious injury of marine mammals associated with commercial fisheries. This Environmental Assessment (EA) addresses interactions between gillnet fisheries in the southeastern United States and the North Atlantic right whale (*Eubalaena glacialis*) within the context of measures outlined in the ALWTRP. Because of the recent entanglement and death of a right whale, discovered on January 22, 2006, within the Southeast U.S. Restricted Area during the restricted period (November 15-March 31), NMFS proposes to prohibit the use of all gillnet gear in the Southeast U.S. Restricted Area in order to reduce the potential for further North Atlantic right whale/gillnet gear interactions.

### **1.0 Purpose and Need for Action**

The purpose of this action is to close the Southeast U.S. Restricted Area to all gillnets from the effective date until March 31, 2006, to reduce the potential for serious injury or mortality to the critically endangered North Atlantic right whale. This action is needed to implement requirements under the ESA, the MMPA, and specifically, the regulations implementing the ALWTRP. The ALWTRP states that if a serious injury or mortality of a right whale occurs in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by gillnet gear allowed to be used in that area and time, the AA shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the AA revises the restricted period or implements other measures (50 CFR 229.32 (g)(1)).

## **Background**

On Sunday, January 22, 2006, at 10:30 a.m., a report was made to the United States Coast Guard by a member of the public that a floating whale had been spotted offshore of Jacksonville Beach, Florida. At approximately 11:00 a.m., a Florida Fish and Wildlife Commission (FWC) aerial survey team confirmed the whale species and location and photographed the carcass. The aerial survey team identified the whale as a right whale calf, and photos indicated the calf as having one large wound along the midline and smaller lesions around the base of its tail. The right whale calf was towed to shore that evening from the location of 30°14.4' N. lat., 81°04.2' W. long., which was approximately 1 nautical mile outside of designated right whale critical habitat, but within the Southeast U.S. Restricted Area.

Each year NMFS coordinates an extensive aerial survey effort in the Southeast U.S. right whale

critical habitat area from December 1 through March 31. The New England Aquarium's right whale survey photograph database was consulted to determine the sighting history for the dead calf. On Friday, December 30, 2005, the calf and its mother were sighted together off St. Catherines Island, Georgia. The calf did not show evidence of entanglement at the time. On January 8 and 9, 2006, the pair were sighted off the mouth of Nassau Sound, Florida and Cumberland Sound, Georgia, respectively. By that time, the aerial survey photographs suggested the calf had linear scars, consistent with some type of entanglement event. The pair was last observed together off Jacksonville Beach, Florida, on Wednesday, January 11, 2006. On Saturday, January 21, 2006, the calf's mother was observed, without the calf, near the area where the dead calf was recovered the following day. The adult female right whale was observed breaching, blowing bubbles, diving and surface swimming, which may have been signs of agitated behavior. The calf's carcass was found and reported on January 22, 2006, approximately 16 nautical miles off Jacksonville Beach, Florida. Based on the condition of the whale when necropsied and local surface water temperatures, the investigators conclude that this animal died within 3 to 6 days prior to necropsy. An analysis of local wind and water currents prior to January 22 indicated that the winds were west to northwest, placing the location where the calf most likely died as inshore and north of where the carcass was found. NMFS has determined that both the entanglement and death of the whale occurred within the Southeast U.S. Restricted Area for the following reasons: (1) All sightings of this calf occurred within the Southeast U.S. Restricted Area; (2) all the southeast sightings were recent; (3) mother-calf pairs typically remain on the calving grounds in January; (4) the carcass was found within the Southeast U.S. Restricted Area; and (5) the calf's most likely location when it died was inshore and north of where the carcass was found.

On Monday, January 23, 2006, at 7:15 a.m., a specialized large whale necropsy team, which consisted of various federal, and state government representatives and university and non-profit marine mammal specialists, performed a thorough necropsy of the whale. This consisted of measuring, photographing, dissecting, and collecting tissues samples of the animal in order to determine the possible cause of death. The necropsy team's gross examination indicated a variety of lesions including numerous small lesions around the tailstock and a single large dorsal lesion. The whale had a complex array of wounds around its tailstock. Two wounds were bites from a small shark. Those wounds had been seen in aerial photos of the calf as early as December 30, 2005. Most of the remaining wounds formed straight-line, vee-, and diamond-shaped patterns. These small lesions appeared to be pre-mortem and caused by a fine cutting edge such as monofilament net, which would also correspond to the characteristic vee and diamond shapes of gillnet gear. There was also some post-mortem scavenging by sharks. The whale had a large wound splitting open most of its back. The wound appeared to have occurred post-mortem and was not the result of a vessel strike. The edges of the middle of the wound were clean-cut, while the ends were ragged. A notable observation by the necropsy team was that cyamids had migrated to the tailstock, indicating significant injury to this area which may have impeded the animal's ability to swim and dive. The necropsy team also noted that the blubber thickness would suggest the animal was in good body condition, but, based on its empty gastrointestinal track, it had not been able to nurse for at least a day prior to its death.

The immediate cause of death of the whale (e.g. drowning, dehydration, infection) has not been determined and may never be completely known. However, all available evidence suggests the entanglement and injury of the whale by gillnet gear ultimately led to the death of the animal. The evidence of recent entanglement was clearly documented by the necropsy team. The degree of entanglement meets NMFS' criteria of a serious injury (i.e., an injury likely to result in mortality). While there was no entangling gear on the animal at the time it was reported, NMFS knows it was not removed through permitted disentanglement efforts, and NMFS believes that the calf did not disentangle itself as it was young and not expected to be strong enough to shed the imbedded gear. Therefore, based on the results of the necropsy, the New England Aquarium's aerial survey database, evidence of gillnet fisheries operating in the area (see Affected Fisheries), and in the absence of other significant explanatory findings, NMFS has determined that the right whale mortality, which occurred on January 22, 2006, was as a result of entanglement in gillnet gear.

## **2.0 Description of the Proposed Action and Alternatives**

### **2.1 Alternative 1 - No-Action Alternative**

The No-Action Alternative would not implement the contingency measures for the Southeast U.S. Restricted Area specified in the ALWTRP. Gillnet fishing in the southeast U.S. would not be restricted further and would continue at current levels.

### **2.2 Alternative 2 - Proposed Action: Temporary prohibition of gillnets in the Southeast U.S. Restricted Area.**

The Proposed Action would implement gillnet fishing prohibitions in the Southeast U.S. Restricted Area from the effective date of the rule through March 31, only for 2006. The AA is directed to enact these measures if a serious injury or mortality of a right whale occurs in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by gillnet gear allowed to be used in that area and time.

### **2.3 Alternative 3 - Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31.**

As with the Proposed Action, Alternative 3 would implement the immediate closure of the Southeast U.S. Restricted Area to gillnets through March 31, 2006. Additionally, it would create a permanent prohibition on the use of gillnets in the Southeast U.S. Restricted Area from November 15 through March 31, annually.

## **3.0 Affected Environment**

On August 6, 1996 (61 FR 40819), NMFS established the Atlantic Large Whale Take Reduction Team (ALWTRT) to prepare a draft take reduction plan (TRP) to reduce the incidental serious

injury and mortality of right, humpback, and fin whales, as well as to provide conservation benefits to a fourth, non-endangered species, the minke whale, in the following commercial fishing operations: South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery. Although the ALWTRT developed specific management measures for the above fisheries, the ALWTRT members also represented other commercial fisheries, such as the Southeast Atlantic gillnet fishery. The ALWTRT submitted a report to NMFS on February 1, 1997, with recommendations to reduce the serious injury and mortality of Atlantic large whales; however, the ALWTRT did not reach consensus on recommendations. Thus, without the ALWTRT's consensus, NMFS developed a final TRP and implementing regulations after considerable public input. An interim final rule was published in July 1997 (62 FR 39157), and a final rule was published February 16, 1999 (64 FR 7529), with an April 1, 1999, effective date.

The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications, operational restrictions, and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear. Because of the right whale's extremely endangered status and its potential biological removal (PBR) level of zero, there was great concern about serious injury or mortality to right whales, so NMFS included contingency measures that would allow further closures of the Cape Cod Bay critical habitat, Great South Channel restricted area, and the Southeast U.S. Restricted Area, if a right whale mortality or serious injury occurs in these areas. If a serious injury or mortality of a right whale occurs in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement in gillnet gear allowed to be used in that area and time, the AA is required to close that area to that gear type for the rest of that time period, and for that same time period in each subsequent year, unless the AA implements other special measures or revises the restricted period (50 CFR 229.32(g)(1)). Therefore, the general effect of these alternatives, except the No-Action Alternative, should be beneficial to right whales (the primary marine resource affected by this action).

The affected environment was discussed in detail in Section 6.0 of the EA on the ALWTRP published in July 1997 (NMFS 1997). The physical area affected by this action is an area off the Florida-Georgia coast in the Southeast U.S. Restricted Area as defined by the ALWTRP. The biological resources potentially affected by this action are also described in detail in the EA published in July 1997 (NMFS 1997), and updates are provided below.

### **3.1 Physical Environment**

Effective July 5, 1994, three areas of the right whale's range in the United States were declared to be critical habitat by NMFS: (1) Great South Channel, (2) Cape Cod Bay, and (3) the Southeastern U.S. waters. The Southeastern U.S. critical habitat is defined as the coastal waters between 31°15' N lat. and 30°15' N lat. from the coast out 15 nautical miles, and the coastal waters between 30°15' N Lat. and 28°00' N Lat. from the coast out 5 nautical miles (50 CFR 226.203). Under the ALWTRP regulations (50 CFR 229.32) additional management areas have been defined. The Southeast U.S. Restricted Area has been defined as the waters from 32°00'N.



lat. (near Savannah, GA) south to 27°51'N. lat. (near Sebastian Inlet, FL) and extending from the shore eastward out to 80°00' W. long. [50 CFR 229.32 (f)(1)(i)]. The Southeast U.S. Observer Area consists of the Southeast U.S. Restricted Area and an additional area extending from the southern boundary of the Southeast U.S. Restricted Area south to 26°46.5' N. lat. (near West Palm Beach, FL) and extending from the shore out to 80°00' W. long. (Fig. 1).

Seasonal water temperatures and salinity for waters off Georgia and Florida are higher than in northeastern waters of the U.S. This is a transition area separating subtropical from temperate southeastern marine communities. The GA/FL area is not considered a foraging ground for right whales; however, the area does provide important calving and nursing habitat for right whales in the North Atlantic. The southeastern U.S. coast (North Carolina to Florida) is the only known calving area for right whales in the North Atlantic, with the majority of right whales giving birth off Georgia and Florida (NMFS 2005b).

## **3.2 Biological Environment**

### **3.2.1 Marine Mammals**

The status of the large whales is discussed in detail in Section 2.2 of the EA published in July 1997 (NMFS 1997), and is hereby incorporated by reference. Additional updated information about the large whales and bottlenose dolphins that may be impacted by the Proposed Action is contained in the 2003 Marine Mammal Stock Assessment Report (SAR) (Waring et. al. 2003). Additional information about the population biology and human-caused sources of mortalities and serious injuries are also included in the SAR. Details regarding mortality and serious injury determinations for large whales along the east coast are available at [www.nero.noaa.gov/whaletrp](http://www.nero.noaa.gov/whaletrp).

#### **3.2.1.1 North Atlantic Right Whale**

The North Atlantic right whale was severely depleted by commercial whaling and despite protection from commercial harvest since 1935, has not recovered. The population is believed to be at or less than 300 individuals, making it one of the most critically endangered large whale species in the world (NMFS 2005b).

North Atlantic right whales occur in coastal and nearshore waters off the eastern United States and Canada, areas also used by fishing and other maritime activities that adversely affect the species. Deaths from collisions with ships and entanglement in fishing gear are significant impediments to the recovery of the species. In the period 1997 to 2001, human-caused mortality and serious injury to North Atlantic right whales from fishery entanglements and ship strikes was an estimated average of 2.0 per year (Waring et al. 2003). A serious injury has been defined as “any injury that will likely result in mortality” (50 CFR 216.3). Kraus et al. (2005) indicated that the overall mortality rate increased between 1980 and 1998 to a level of at least four percent per year, a rate that is not sustainable. The Potential Biological Removal (PBR) level for right whales is zero; thus, any mortality or serious injury to the species is considered significant.

The serious injury and mortality of the right whale as a result of commercial fishing activities continues to occur at a rate above PBR (Waring *et al.* 2003). Knowlton and Kraus (2001) documented 56 right whale human-related serious injuries and deaths from 1970 to 1999, with at least 31 attributed to entanglements in fishing gear, for an average of 1.0 mortalities and serious injuries per year over that time period. Cole *et al.* (2005) documented, for 1999-2003, confirmed 31 reports of entanglements, 5 resulting in serious injuries and 3 resulting in mortalities, for an average of 1.6 mortalities and serious injuries per year over that time period.

#### **3.2.1.2 Humpback Whale**

The best estimate of abundance for the overall population of North Atlantic humpback whales is 11,570 (Waring *et al.* 2003). Humpback whales off the eastern coast of the United States are considered to be part of the Gulf of Maine stock. A recent SAR distinguishes the Gulf of Maine stock as having a best estimate of abundance as 902, and a minimum population estimate of 647. The maximum net productivity rate for Gulf of Maine stock humpback whales is assumed to be 0.04. The PBR level for this stock is 1.3 humpback whales per year.

#### **3.2.1.3 Fin Whale**

The best available estimate of abundance for the North Atlantic fin whale is 2,814, which is considered extremely conservative (Waring *et al.* 2003). The minimum population estimate is 2,362. For purposes of the current stock assessment, the maximum net productivity rate for fin whales is assumed to be 0.04. The PBR for this stock is 4.7.

#### **3.2.1.4 Minke Whale**

Minke whales off the eastern coast of the United States are considered to be part of the Canadian east coast stock, which inhabits the area from the eastern half of Davis Strait south to the Gulf of Mexico. The best estimate of the population is 4,018 (Waring *et al.* 2003), which is considered conservative. The minimum population estimate for Canadian east coast minke whales is 3,515. The current and maximum net productivity rates are not known, but the maximum rate is assumed to be 0.04. The PBR for this stock of minke whales is 35.

#### **3.2.1.5. Bottlenose Dolphins**

The best available abundance estimate for bottlenose dolphins in the western North Atlantic is 29,774. The minimum population estimate for the western North Atlantic offshore bottlenose dolphin is 24,199. For the purposes of the 2003 SAR, the maximum net productivity rate was assumed to be 0.04 and PBR is 242 (Waring *et al.* 2003).

### **3.3.2 Sea Turtles**

The following sea turtles are known to occur in the pelagic waters of the Atlantic: leatherback sea turtle, hawksbill sea turtle, green turtle, Kemp's ridley sea turtle, and loggerhead sea turtles.

Leatherback, hawksbill, Kemp's ridleys, and the Florida breeding population of green turtles are classified as endangered under the ESA. Loggerheads are designated as threatened. A thorough review of the life history, status and trends, and threats is available in the February 15, 2005, biological opinion (NMFS 2005a), and is therefore incorporated by reference.

### **3.4 Economic Environment**

The ALWTRP's Southeast U.S. Restricted Area consists of state and federal waters off the coasts of Florida and Georgia, from 27° 51' N latitude (near Sebastian Inlet, Florida) northward to 32° 00' N latitude (near Savannah, Georgia) extending from the shore outward to 80° W longitude. This action will close the Southeast U.S. Restricted Area to gillnet fishing during the months of February and March 2006. Consequently, it will affect landings, revenues, and profits that could be derived from gillnet fishing in the restricted area during these two months.

There are existing laws and regulations that limit gillnet fishing in part or all of the Southeast U.S. Restricted Area. At the federal level, shark gillnet fishing has been prohibited since November 1997 in this area during the period from November 15 through March 31, except when an observer is on board the vessel, the net is used as a runaround (or strike) gillnet, and when certain other conditions are met. No person may fish with shark gillnet gear in this area from November 15 through March 31 unless the vessel operator notifies NMFS at least 48 hours in advance of departure to arrange for observer coverage (50 CFR 229.32(f)(3)(i)). NMFS has received no requests for observers from vessels to fish the closed areas with strike gillnet gear since the regulation was implemented on November 15, 1997. Given the small number of vessels with permits to fish for sharks that operate in this area (approximately 6-8 vessels), this is taken as a prima facie indication that directed shark fishing has not occurred. However, gillnets are used on trips that target fish other than shark and some shark are caught incidentally on such trips.

At the state level, Georgia law (OCGA 27-4-7 (b)) prohibits shark gillnet vessels from landing catch in the state. That same law extends to a suite of finfish species, which includes king whiting (*Meticirrhus* spp.), and prohibits the use of gillnets in state marine waters. Consequently, this action cannot affect landings of shark or king whiting or gillnet fishing in Georgia marine waters because these practices cannot legally occur.

Likewise, a Florida constitutional amendment precluded the use of gillnets and certain other net gear within state waters starting in July 1995. Florida Fish and Wildlife Conservation Commission (FWC) Trip Ticket data from 2000 through October 2005 shows that Florida gillnet fishermen land king whiting, shark, king mackerel, Spanish mackerel, bluefish, and other species. Shark is the most landed species by weight, followed by Spanish mackerel, "other species," bluefish, king whiting, and king mackerel.

## **4.0 Environmental Consequences of the Alternatives**

The environmental consequences of the three alternatives are analyzed below for other media (air quality, water quality, solid waste, and hazardous waste), the physical environment, and for impacts on socioeconomic, biological, and historical resources.

#### **4.1 Biological Consequences**

##### **4.1.1 Alternative 1- No-Action Alternative**

The No-Action Alternative is the least risk-averse of the alternatives. Under this alternative, no additional gear restrictions will be enacted for the Southeast U.S. Restricted Area. Gillnet fishery effort will not be prohibited, and there will be no reduction in the risk of injury or mortality to the critically endangered North Atlantic right whales as a result of entanglement in gillnet fishing gear. Further right whale serious injury or mortality may occur during the calving season, despite the recently documented mortality, which exceeded the right whales' PBR of zero. This alternative also does not comply with the requirements of the ALWTRP to enact gillnet prohibitions in the Southeast U.S. Restricted Area if a right whale has been entangled in such gear between November 15 and March 31 of any year.

This alternative would result in no change to the gillnet fisheries, therefore no change in impacts to other biological resources would be expected.

##### **4.1.2 Alternative 2 - Proposed Action: Temporary prohibition of gillnets in the Southeast U.S. Restricted Area.**

The proposed action would prohibit gillnets in the Southeast U.S. Restricted Area from the effective date of the rule through March 31, 2006. This action would significantly reduce the likelihood of gillnet gear interactions with the critically endangered North Atlantic right whale during a time when right whales are known to frequent the Southeast U.S. Restricted Area. Enacting the proposed alternative will provide protection for the right whales for the remainder of the high-use time period while allowing the ALWTRT to reconvene and discuss the possible options, including permanent seasonal gillnet prohibitions, that can be taken to protect right whales in the Southeast U.S. Restricted Area in subsequent years. Such options would then be presented to the AA to determine the most appropriate course of action, consistent with the ALWTRP implementing regulations.

In addition to achieving the intention of reducing the likelihood of injury or mortality to right whales, this alternative would also result in a reduction in the risk of injury or mortality to other species that may become entangled in gillnet gear, such as other large whales, bottlenose dolphins, and sea turtles.

##### **4.1.3 Alternative 3 - Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31.**

Similar to the Proposed Alternative, Alternative 3 would also significantly reduce the likelihood of gillnet gear interactions with the critically endangered North Atlantic right whale, reducing the risk of serious injury and mortality. This alternative would also meet the requirements of the ALWTRP implementing regulations. However, it would not provide the added flexibility of determining the most effective long-term measure to enact.

In addition to achieving the intention of reducing the likelihood of injury or mortality to right whales, this alternative would also result in a reduction in the risk of injury or mortality to other species that may become entangled in gillnet gear.

## **4.2 Effects on Other Media**

The three alternatives will not change the nature of gillnet fishing or any other use of the environment, so implementation of any of the alternatives will not cause additional degradation of water quality, air quality, the physical environment, or human health, or cause an increase in environmental contaminants or solid waste disposal over current activities. Implementation of any of the alternatives will not change the gillnet fisheries' effects on cultural resources in the area; therefore, coordination with the State Historic Preservation Officer under the National Historic Preservation Act is not required.

## **5.0 Economic Consequences**

### **5.1 Introduction**

The following is a brief discussion of the fisheries expected to be affected by this action. A full discussion of the economic consequences as a result of each alternative is contained within the Regulatory Impact Review (Section 7.1).

### **5.2 Description of the Fisheries**

In southeast Atlantic waters, commercial fishermen target various finfish and shark species using gillnet gear of varied sizes and deployment techniques. Fisheries expected to be affected by this rulemaking include, but are not limited to, the Southeastern U.S. Atlantic shark gillnet fishery and the Southeast Atlantic gillnet fishery. The Southeastern U.S. Atlantic shark gillnet fishery uses 5-inch or greater stretch mesh gillnet gear, typically targeting various shark species. NMFS believes there are approximately six to eight active vessels in this fishery. The FWC's trip ticket database (2002-2005) for counties within the Southeast U.S. Restricted Area (Nassau, Duval, St. John's, Flagler, Volusia, and Brevard) indicates that overall shark landings, number of trips, and the dollar value of this fishery as it is prosecuted within the Southeast U.S. Restricted area has been declining since 2002. In 2005, there was a total of 280,235 pounds of sharks landed, which corresponded to 180 trips and a value of \$180,015. Although the Southeast U.S. Restricted Area consists of Florida and Georgia waters, landings information was only obtained from Florida

since landings from gillnet gear are prohibited in the State of Georgia. This fishery is managed by the NMFS Office of Sustainable Fisheries, Highly Migratory Species Division.

The Southeast Atlantic gillnet fishery typically use smaller mesh gillnet gear, less than 5-inch stretch mesh, targeting mostly coastal migratory pelagic species (king mackerel, Spanish mackerel, and bluefish). Based on the FWC's trip ticket database for 2005, NMFS believes that approximately 56 individuals participate in this fishery. Data from the same database for 2002-2005 for counties within the Southeast U.S. Restricted Area indicate that overall finfish landings, number of trips, and the value of the fishery as prosecuted in the Southeast U.S. Restricted Area has been decreasing since 2002 for fishermen targeting finfish with gillnets within the Southeast U.S. Restricted Area. For 2005, there was a total of 153,905 pounds of finfish landed, which corresponded to 978 trips and a value of \$129,454.00. As stated above, the Southeast U.S. Restricted Area consists of Florida and Georgia waters, but landings information was only obtained from Florida since landings from gillnet gear are prohibited in the State of Georgia. Finfish landings in Florida have been dominated by the following species: bluefish, Spanish mackerel, cobia, and King mackerel. These species are managed by NMFS and the South Atlantic Regional Fishery Management Council.

NMFS has also become aware of recent increases in gillnet fishing activity in the Southeast U.S. Restricted Area by fishermen using sink gillnet gear of various mesh size targeting demersal finfish, primarily king whiting. In contrast to the above landings information, the FWC's trip ticket database (2002-2005) for counties within the Southeast U.S. Restricted Area indicates that overall finfish landings, number of trips, and the value of demersal finfish landings have been increasing since 2002, mostly from fishermen targeting whiting with gillnets. NMFS is unaware how many participants there are fishing for demersal finfish using only sink gillnet gear, since catches from all gillnet gear are combined in the trip ticket database. For 2005, there was a total of 461,858 pounds of whiting landed, which corresponded to 589 trips and a value of \$363,960.00. Again, the Southeast U.S. Restricted Area consists of Florida and Georgia waters; however, landings information was only obtained from Florida since landings from gillnet gear are prohibited in the State of Georgia. At this time, the South Atlantic Regional Fishery Management Council does not prohibit the use of gillnets within the southeast Exclusive Economic Zone waters for non-FMP species (50 CFR 600.725). Thus, fishermen who target whiting are not regulated by a FMP.

## **5.3 Socioeconomic Impact Assessment**

### **5.3.1 Effects on Existing Fisheries and Communities**

#### **5.3.1.1 Alternative 1 - No-Action Alternative**

The No-Action Alternative would impose no additional gear restrictions in the southeast United States and would therefore allow status quo operation of fishing activities in the ALWTRP's Southeast U.S. Restricted Area during the right whale calving season. However, failure to act in a timely manner may jeopardize the existence or recovery of the right whale, and require more severe fishery management measures such as wider closures, which would likely impose significant economic and social impacts. The extent of these additional impacts, however, cannot be assessed at this time, since the actions have not been specified; but they would most likely be greatly increased from that described under the Proposed Action alternative.

#### **5.3.1.2 Alternative 2 - Proposed Action: Temporary prohibition of gillnets in the Southeast U.S. Restricted Area**

Through this rule, NMFS aims to reduce the potential for further entanglement of North Atlantic right whales in gillnet gear in the Southeast U.S. Restricted Area. The 2-month temporary closing of the Southeast U.S. Restricted Area to gillnet fishing is not expected to have a significant adverse or beneficial impact on fishing communities in Florida or Georgia that are dependent on or engage in gillnet fishing. While the Proposed Action places an economic burden on some of these communities (detailed in Section 7.1), it does not prohibit fishing with other gear in the Southeast U.S. Restricted Area. Furthermore, the observed increase in gillnetting activity in the Southeast U.S. Restricted Area is fairly recent so the proposed action is not likely to have the economic consequences to fisheries and their communities as would closing a well-established and traditional fishery upon which livelihoods are dependent. Some gillnet fishermen will mitigate both their losses and the indirect impacts on their communities by shifting their operations outside the Southeast U.S. Restricted Area.

There is a high degree of public support for endangered species protection. In 1996, 79% of randomly selected Americans either strongly or moderately supported using tax dollars to save endangered species (Duda et. al. 1998). The implementation of this emergency measure to protect the endangered right whale should precipitate increased satisfaction among those groups and individuals who place an existence or non-use value on natural resources. Social benefits may be realized if this temporary action is effective at reducing the risk to North Atlantic right whales, and, incidentally, other marine mammals and sea turtles, of entanglement. If this reduced risk increases the potential for recovery then society will benefit by preventing a loss of a species and preserving biodiversity.

#### **5.3.1.3 Alternative 3 - Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31**

This alternative would extend the prohibition of gillnets from a temporary 2-month prohibition to an annual 4 ½-month prohibition. Because this alternative would be a 4 ½-month recurring ban, it will have a much greater adverse impact on gillnet fishermen who routinely operate in the Southeast U.S. Restricted Area.

Social benefits may be realized if these gear restrictions are effective at reducing the risk of entanglement to North Atlantic right whales, other marine mammals, and sea turtles. If this reduced risk increases the potential for recovery, then society will benefit by preventing a loss of a species and preserving biodiversity. While these gear restrictions may place an economic burden on fishers, they do not prohibit fishing altogether and allow use of other gear. Social benefits are realized from the application of management practices that demonstrate that fishing practices and marine mammals can co-exist.

Permanent rulemaking, such as considered under this alternative, will involve a lengthier public review process and would greatly slow down the rulemaking process.

### **5.3.2 Cumulative Effects on Existing Fisheries and Communities**

#### **5.3.2.1 Alternative 1 - No-Action Alternative**

By implementing the No-Action Alternative, NMFS would not impose additional impacts on the existing fisheries and communities. Therefore, no additional impacts would affect the gillnet fisheries, and cumulative effects would remain constant.

#### **5.3.2.2 Alternative 2 - Proposed Action: Temporary prohibition of gillnets in the Southeast U.S. Restricted Area**

The objective of the temporary rule is to prevent further entanglements of right whales during the 2006 right whale calving season. Existing federal regulations and state regulations and laws affect gillnet fishing in the Southeast U.S. Restricted Area. At the federal level, shark gillnet fishing has been prohibited since November 1997 in this area during the period from November 15 through March 31, except when an observer is on board the vessel, the net is used as a runaround (or strike) gillnet, and when certain other conditions are met. No person may fish with shark gillnet gear in this area from November 15 through March 31 unless the vessel operator notifies NMFS at least 48 hours in advance of departure to arrange for observer coverage (50 CFR 229.32(f)(3)(i)). NMFS has received no requests for observers from vessels to fish the closed areas with strike gillnet gear since the regulation was implemented on November 15, 1997. Given the small number of vessels with permits to fish for sharks that operate in this area, this is taken as a prima facie indication that directed shark fishing has not occurred. However, gillnets are used on trips that target fish other than shark and some shark are caught incidentally on such trips. Both Florida and Georgia prohibit the use of gillnets in state waters. Therefore, when taking into account the existing state and Federal restrictions, the emergency action would pose a cumulative impact on gillnet fishers. However, the cumulative impact of the emergency action is not significant because 1) lack of requests for observers



indicate no shark strikenetting is occurring in the area, 2) landings data indicate that gillnetting for whiting in northeastern Florida is only a recent development (within the last few years), 3) Florida trip ticket data indicate that for the past six years, during the months of February and March, an average of 15 fishermen fish in the affected area, and 4) the regulation is effective only for the remainder of February and March (approximately two months).

#### **5.3.2.3 Alternative 3 - Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31**

The objective of this particular alternative is to prevent entanglements of right whales during all subsequent right whale calving seasons. Existing federal regulations and state regulations and laws affect gillnet fishing in the Southeast U.S. Restricted Area, as identified above for the Proposed Action. When taking into account the existing state and Federal restrictions, the emergency action would pose a cumulative impact on gillnet fishers.

Decreasing the risk of right whale entanglements under this alternative increases the annual cost to the gillnet fleet. Moreover, the cumulative effects on gillnet fishers due to this alternative could be significant because gillnet fishing is currently prohibited in Florida and Georgia state waters and this alternative would eliminate gillnet fishing in federal waters found in the Southeast U.S. Restricted Area 4 ½ months of every year.

### **5.3.3 Consistency with Other Plans and Policies for Existing Fisheries and Communities**

#### **5.3.3.1 Alternative 1 - No-Action Alternative**

By adopting the No-Action Alternative, NMFS would be acting inconsistently with respect to the ALWTRP implementing regulations, as well as the ESA. In addition, NMFS would not improve the likelihood of reducing the incidental takes of North Atlantic right whales by commercial fisheries to levels below PBR.

#### **5.3.3.2 Alternative 2 - Proposed Action: Temporary prohibition of gillnets in the Southeast U.S. Restricted Area**

By implementing the proposed action, NMFS would be acting consistently with the ALWTRP's implementing regulations by closing the gillnet fishery in the Southeast U.S. Restricted Area for the rest of the restricted period (through March 31) and mandates of the ESA. This alternative would provide the quickest implementation schedule for providing additional protection measures to right whales from gillnet entanglement in the Southeast U.S. Restricted Area.

#### **5.3.3.3 Alternative 3 - Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31**

By implementing the proposed action, NMFS would be acting consistently with the implementing regulations of the ALWTRP by closing the gillnet fishery in the Southeast U.S.

Restricted Area for the rest of the restricted period (through March 31) for this and subsequent years, and the mandates of the ESA. However, this alternative would involve a lengthier rulemaking process and comment period and would prevent NMFS from implementing immediate protection measures for right whales in the Southeast U.S. Restricted Area during the remainder of the calving season.

## **6.0 Finding of No Significant Impact for Temporary Rule Implementing the Atlantic Large Whale Take Reduction Plan Gear Restrictions**

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) and NMFS Policy Directive 30-124-1 (July 22, 2005) contain criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” The applicable context for the proposed action consists of gillnet fisheries that operate in certain federal waters off Georgia and Florida (the Southeast U.S. Restricted Area). Each criterion listed below is relevant to evaluating the intensity of the proposed action, or the magnitude and severity of impacts of the action on the affected resources or area.

### **1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?**

The proposed action is not expected to cause any damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs, given that the action prohibits the use of gillnet gear in an area to avoid entanglement of right whale cows and calves. The value of this area was considered in the essential fish habitat consultation process and the unique characteristics will not be impacted by this Proposed Action.

### **2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

The proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.), given its temporary nature and limited geographic scope. However, the proposed action may be beneficial to flora and fauna that are potentially adversely affected by gillnetting activity in the Southeast U.S. Restricted Area.

### **3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?**

Public health and safety is not expected to be adversely affected by implementation of gear restrictions, as described under the proposed action. Gillnetting has not been shown to have any

effects on public health and safety in general. Additionally, this proposed action will not substantially change the way gillnetting is conducted, but will prohibit the use of gillnets during the specified period and in the specified area.

**4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?**

The proposed action is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. The basis for this proposed action is to offer additional short-term protection to the critically endangered right whale. It is expected that other protected marine mammals and ESA-listed sea turtles, to the extent their distribution and abundance coincides with concentrations of right whales during the calving season, will benefit from the imposition of gear restrictions.

**5) Are significant social or economic impacts interrelated with natural or physical environmental effects?**

No significant social or economic impacts interrelated with natural or physical environmental effects are expected from this action. This action affects only a small percentage of overall gillnet fishermen during an extremely limited timeframe. The natural and physical environmental effects of the action consist of preventing entanglement of right whales by limiting their exposure to gillnet gear. There are no known social or economic impacts associated with these effects, other than societal benefits attributable to preventing injury to the whales. The conservation of right whales is anticipated to preclude future restrictions on economic activity.

**6) Are the effects on the quality of the human environment likely to be highly controversial?**

The effects of gear restrictions on the human environment are not likely to be highly controversial. The impact of gear restrictions may be controversial to a small segment of the fishing community, but the overall effects on the human environment are not expected to be highly controversial. These gear restrictions are limited in time and geographic area, and are implemented in an effort to facilitate the coexistence of fishing activity and whales. These factors restrict the scope of the effects on the human environment. In contrast, the potential effects of a failure to act which could include further injury or mortality of right whales in their calving area, would be highly controversial with the environmental organization community and a sizeable segment of the public.

**7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?**

The restrictions on gillnetting will not impact park land, farmlands, wild and scenic rivers, or wetlands, as these areas are not in the vicinity of the Southeast U.S. Restricted Area. As

determined during the consultation process, this action will not impact essential fish habitat. Compliance with these restrictions is not likely to result in the permanent loss or destruction of, or impact to any historic or cultural resources or ecologically critical areas.

**8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?**

The effects on the human environment from the proposed action are not expected to be highly uncertain or involve unique or unknown risk. Although the proposed action will close all gillnet fishing within the Southeast U.S. Restricted Area, the proposed action is only for a short period and limited in scope.

**9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?**

The EA examines the cumulative effects of the proposed action and existing restrictions on gillnet gear. Based on the information presented, it does not appear that the Proposed Action has significant impacts on society nor will it result in cumulatively significant impacts.

**10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?**

There is no evidence that the implementation of gear restrictions will adversely affect entities listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historic resources. Compliance with these restrictions is not likely to result in the permanent loss or destruction of any resources.

**11) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?**

The implementation of gear restrictions will not result in any actions that would result in the introduction or spread of a nonindigenous species.

**12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?**

The requirement for this proposed action, and for this or suitable alternative management actions in subsequent years, already exists in the implementing regulations of the ALWTRP (50 CFR 229.32 (g)(1)). Therefore, the precedent regarding the need for a closure in the Southeast U.S. Restricted Area has been established a priori. Moreover, a permanent closure is not automatic.

The ALWTRT will be convened to consider additional closures pursuant to the factors in CFR 229.32 (g)(2) and in light of the 2005 proposed rule to modify the ALWTRP.

**13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?**

Implementation of gear restrictions will not result in a violation of a Federal, state or local law for environmental protection. In fact, gear restrictions would be expected to support Federal, state and local laws for environmental protection because it is expected that their goals and objectives would be similar to those of the MMPA and ESA (e.g., the Florida and Georgia state gillnet prohibitions detailed in section 3.4 of the EA).

**14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?**

The proposed action is not reasonably expected to result in cumulative adverse effects on a target species or non-target species since the proposed action is to prohibit the use of gillnets within the Southeast U.S. Restricted Area. Although the purpose and need of the proposed action is focused on the protection of right whales within the Southeast U.S. Restricted Area, beneficial effects for finfish and sharks are expected. Thus, it is reasonable to expect that non-target species may also experience beneficial effects.

## **DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for the Temporary Rule implementing the Atlantic Large Whale Take Reduction Plan Gear Restrictions, the essential fish habitat and Endangered Species Act Section 7 Consultation, it is hereby determined that the Temporary Rule will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed

action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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William T. Hogarth, Ph.D.  
Assistant Administrator for Fisheries, NMFS

\_\_\_\_\_  
Date

## **7.0 Other Applicable Laws**

In accordance with legal mandates, NMFS must consider the effect of the Proposed Action on small businesses, marine mammals, endangered species, essential fish habitat, and the human environment.

### **7.1 Regulatory Flexibility Act (RFA) and Executive Order (E.O.) 12866**

Congress passed the Regulatory Flexibility Act (RFA) to ensure that Federal agencies consider the impacts of regulations, taking into account the special needs and concerns of small businesses through an initial regulatory flexibility analysis. The RFA requires analysis of a proposed regulation only when notice and comment rulemaking is required under the Administrative Procedure Act (APA). As this rule is a temporary action, it is exempt from APA notice and comment requirements, and, therefore, the RFA does not apply.

Executive Order (E.O.) 12866 requires that a Regulatory Impact Analysis be prepared for all regulatory actions that are of public interest. To meet this mandate, NOAA Fisheries (NMFS) requires the preparation of a Regulatory Impact Review (RIR) for proposed actions. The RIR does three things: 1) it provides a comprehensive review of the incidence and magnitude of impacts associated with a proposed or final regulatory action, 2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem, and 3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether the proposed rule is a “significant regulatory action.” Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it: (1) has an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

E.O. 12866 requires that the Office of Management and Budget review regulatory programs that are likely to be “significant.” NMFS complies with the E.O. through the preparation of a Regulatory Impact Review (RIR). The rule associated with this EA has been determined to be not significant for the purposes of the E.O. The RIR is incorporated in this section.

### **7.1.1 Introduction and Description of the Reasons Why Action is Being Taken**

North Atlantic right whale calves and females are at risk of becoming entangled in commercial fishing gear because the females calve in nearshore Atlantic waters of the southeast United States. Fishermen typically leave fishing gear, such as gillnets, in the water for a discrete period, after which the nets are hauled and their catch retrieved. While the nets are in the water, whales may become incidentally entangled in the lines and nets that comprise gillnet fishing gear.

The effects of entanglement can range from no injury to death. According to a May 14, 2003, report by the Center for Coastal Studies, “When ... [whales] become fouled in gear, normal breathing and movement may be impaired or stopped completely. If the animal does manage to struggle free, portions of gear may remain attached to the body. This trailing gear, often made of durable synthetic material, may create excess drag, snag onto objects in the environment and impede normal behavior like breathing, feeding, movement, or breeding. Other effects include infections and deformations.”

A scarification analysis conducted by the New England Aquarium (Knowlton et al., 2002) found that juvenile right whales are entangled with greater frequency than adults. Juvenile animals may not have sufficient strength to break free from entangling lines, which can lead to serious injury and infection resulting from the animal “growing into” the lines.

On January 22, 2006, a right whale was found dead in the Southeast U.S. Restricted Area, during the restricted period (November 15-March 31), with evidence of recent entanglement in gillnet gear. NMFS has determined that, based on the results of the necropsy, aerial survey data, evidence of gillnet fishing in the area, and the absence of other significant explanatory findings, the mortality of the whale was a result of entanglement in gillnet gear.

The Southeast U.S. Restricted Area is described in 50 CFR 229.32 (f)(1)(i) and consists of those waters from 27 51 N. latitude (near Sebastian Inlet, FL) to 32 00 N. latitude (near Savannah, GA) extending from the shore outward to 80 W longitude. According to 50 CFR 229.32(g)(1), if a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by lobster or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for the same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2).

This action will close the Southeast U.S. Restricted Area off the coast of Florida to all gillnet fishing from the effective date of the temporary rule through March 31, 2006.



### **7.1.2 Statement of the Objectives of and Legal Basis for the Temporary Rule**

The objective of this action is to reduce the risk of entanglement of large whales, particularly, the North Atlantic right whale.

The North Atlantic right whale is protected by both the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). In response to its obligations under the MMPA, NMFS established the Atlantic Large Whale Take Reduction Program (ALWTRP) in 1996 to develop a plan and promulgate regulations for reducing the incidental take of large whales in commercial fisheries along the Atlantic Coast to below the stock's Potential Biological Removal (PBR) level. The PBR level is defined in 50 CFR 229.2 as the maximum number of animals, not including natural mortality, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. For right whales, due to their very small population size and highly endangered status, the PBR is zero.

The Southeast U.S. Restricted Area consists of those federal and state waters from 27° 51' N. latitude (near Sebastian Inlet, FL) to 32° 00' N. latitude (near Savannah, GA) extending from the shore outward to 80° W longitude. According to 50 CFR 229.32(g)(1), if a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Southeast U.S. Restricted Area from November 15 through March 31, as a result of an entanglement by lobster or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for the same time period in each subsequent year, unless the Assistant Administrator revises the restricted period or unless other measures are implemented.

### **7.1.3 Estimate of Costs and Benefits of Temporary Rule**

#### **7.1.3.1 Direct Costs and Benefits**

The Southeast U.S. Restricted Area includes state and federal waters off the coast of Florida north of Sebastian Inlet and off the coast of Georgia, south of Savannah. This temporary rule will directly affect all gillnet fishermen who operate in the Southeast U.S. Restricted Area from February through March 2006, and those communities that are dependent on or engaged in gillnet fishing during these two months.

The 2-month temporary closing of the Southeast U.S. Restricted Area to gillnet fishing is not expected to have a significant adverse or beneficial impact on fishing communities in Georgia or Florida that engage in gillnet fishing. First, no gillnet fishermen in Georgia harvest or land fish from the Restricted Area. Second, among the estimated 55 gillnet fishermen in Florida, it is estimated that 15 harvest fish in the Restricted Area during the months of February and March. These 15 fishermen represent 27 percent of all Florida gillnet fishermen on the east coast. For the past six years (2000 - 2005) during the months of February and March, an average of 15 fishermen had combined landings and revenues from gillnet fishing in the Restricted Area of

92,687 pounds and \$74,364, respectively (estimates derived from FWC Trip Ticket data, and correspond to the sum of three areas defined by the FWC Trip Ticket Fishing Area Codes: 722 (Jacksonville), 728 (St. Augustine), and 732 (Cape Canaveral)). These landings represent about 4 percent of the average annual total pounds and less than 6 percent of average annual total revenue of all Florida gillnet fishermen on the east coast (estimates derived from Trip Ticket data for 2000 – 2005). These impacts do not represent a significant impact on gillnet fisheries, gillnet fishermen, or current fishing practices; nor does it significantly impact various fishing sectors, such as dealers, and the communities that engage in gillnet fishing. For those fishermen that are affected, some may mitigate losses by moving out of the Restricted Area during the two-month closure.

The Southeast U.S. Restricted Area includes state and federal oceanic waters off the coast of Georgia south of Savannah. This rule will directly result in losses of landings and revenues derived from gillnet fishing in these waters. However, as stated previously, Georgia law prohibits both the use of gillnets in state marine waters and landings of many salt-water finfish species such as shark, whiting, king mackerel, Spanish mackerel, and bluefish caught by gillnet fishermen in waters outside the state (OCGA 27-4-7). Consequently, there will be no costs as a result of this rule to Georgia gillnet fishermen or fish dealers.

This rule is expected to result in direct losses of landings and revenues to commercial gillnet fishermen of no more than 92,687 pounds and \$74,364. As such, the direct costs of this rule do not represent a significant action because the costs are well below the \$100 million threshold for determining significance.

The direct administrative costs are the costs of developing this rule. It is estimated that the administrative costs combined are no greater than \$1,270. Law enforcement costs associated with gillnetting in the Southeast U.S. Restricted Area will probably decrease as there will be no gillnetting activity to monitor -merely presence or absence information that can be obtained during other patrols. Observer costs associated with gillnetting in the Southeast U.S. Restricted Area will probably decrease.

The direct benefit of this rule is the reduced risk of entanglements of right whales and other listed marine species within the Southeast U.S. Restricted Area.

#### **7.1.3.2 Indirect Costs and Benefits**

The prohibition of gillnet fishing in the Southeast U.S. Restricted Area during the months of February and March will likely not cause significant indirect effects on the economic environment since this action will apply to only a few gillnet fishermen (15 or less), and for a short period of time during which a small percentage of average annual landings is accrued. Nor will this action significantly impact various fishing sectors and the communities dependent on or engaged in fishing because gillnet fishermen may mitigate losses by moving out of the Southeast U.S. Restricted Area during the two months of the closure.

#### **7.1.3.3 Considered but Rejected Alternatives**

#### **7.1.3.3.1 Alternative One: No Action**

This action would not prohibit gillnet fishing in the Southeast U.S. Restricted Area during the months of February and March 2006. Consequently, the direct and indirect costs and benefits of this action are zero because it does not change existing practices.

The No-Action Alternative was rejected because it does not meet the objectives of the MMPA and the ESA, does not reduce the likelihood of serious injury or mortality to right whales, and is not consistent with the implementing regulations of the ALWTRP.

#### **7.1.3.3.2 Alternative Three: Permanent prohibition of gillnets in the Southeast U.S. Restricted Area every year from November 15 through March 31**

This alternative would prohibit gillnet fishing in the Southeast U.S. Restricted Area from January through March and from November 15 through December of each and every year. Consequently, it would prohibit gillnet fishing in the restricted area for 4-1/2 months every year. This alternative would affect an average of 51 Florida gillnet fishermen (the number of gillnetters that fish at some time during the period November 15 to March 31), who would experience average losses of landings and revenues 291,050 pounds and \$184,679 per 5-month period (estimates based on FWC trip ticket data). This impact is significantly less than previous estimates for this same alternative, as analyzed in the 2002 EA for the ALWTRP (NMFS 2002). These costs would represent more than triple the loss of landings and more than double the loss of revenues of the preferred alternative. Moreover, it would increase the indirect costs to wholesalers and other fishing sectors who depend on gillnet fishing in and landings from the Southeast U.S. Restricted Area during these months.

This alternative was rejected because of the lengthy process associated with permanent rulemaking. While it provides the necessary conservation benefits as does the preferred alternative, it does not allow the benefit of exploring other options prior to permanent implementation. The preferred alternative provides the immediate conservation benefits while allowing the ALWTRT to reconvene and examine alternate measures for the AA to consider prior to the subsequent November through March periods.

#### **7.1.3.4 Finding of No Significance**

Pursuant to E.O. 12866, this temporary rule is not a significant regulatory action. However, as it does close the Southeast U.S. Restricted Area to gillnet fishing for nearly 2 months, it is likely to generate some controversy.

### **7.2 National Environmental Policy Act (NEPA)**

The National Environmental Policy Act (NEPA) requires Federal agencies to assess the effects of major Federal actions upon the human environment in the form of an environmental impact

statement or EA. The analysis describes the level of significance of the impact result from the proposed Federal action. NMFS prepared this EA in accordance with NEPA.

### **7.3 Endangered Species Act (ESA)**

The ESA imposes on all Federal agencies a duty to ensure that agency actions do not jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of the Critical Habitat of such species. To effectuate the ESA's duty to avoid jeopardy and adverse modification, the ESA requires the "action" agency to consult with an "expert" agency to evaluate the effects a proposed agency action may have on a listed species. If the action agency determines through preparation of a biological assessment or informal consultation that the Proposed Action is "not likely to adversely affect" listed species or Critical Habitat, formal consultation is not required so long as the expert agency concurs.

A section 7 consultation was completed for this action on February 3, 2006. It was determined that the action is not likely to adversely impact any listed species. If new information reveals additional effects to listed species or its Critical Habitat in a manner or to an extent not previously considered, NMFS will reinitiate consultation under the ESA.

### **7.4 Marine Mammal Protection Act (MMPA)**

The Proposed Action to expand gear restrictions will not adversely affect marine mammals. Instead, the Proposed Action will provide additional risk reduction in the effort to reduce serious injury and mortality of right whales due to entanglement in gillnet gear. The additional protection provided by the Proposed Action will further NMFS' actions to accomplish the goals under section 118 of the MMPA, specifically to reduce mortality and serious injury of marine mammals incidental to commercial fishing operations.

### **7.5 Paperwork Reduction Act (PRA)**

The purpose of the PRA is to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, and other persons resulting from the collection of information by or for the Federal government. The Proposed Action associated with this EA does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

### **7.6 Essential Fish Habitat (EFH)**

Pursuant to the Magnuson-Stevens Act, Federal agencies must undergo a consultation process regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. The area affected by the Proposed Action has been identified as EFH through several FMPs. Because the action involves the temporary removal of fishing effort, and does not increase or alter gear use, NMFS determined that the

proposed gillnet restrictions would not adversely affect EFH of species managed by the NMFS or the South Atlantic Fishery Management Council. Further coordination on this matter was not deemed necessary unless future modifications are proposed which may adversely impact EFH.

## 8.0 References

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- 16 U.S.C. 1361 et seq. United States. Congress. Marine Mammal Protection Act of 1972 as Amended.
- 16 U.S.C. 1531 et seq. United States. Congress. Endangered Species Act of 1973 as Amended.